and the differences between those claims and the claims in the applied reference. This requirement has not been met in the outstanding Office Action. Therefore, the rejection of claim 1 under the judicially created doctrine of obviousness-type double patenting is improper.

Furthermore, according to MPEP §804, when making an obviousness-type double patenting rejection the Examiner should make clear (a) the differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and (b) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent. When considering whether the invention defined in a claim of an application is an obvious variation of the invention defined in the claim of the patent, the disclosure of the patent may not be used as prior art.

In rejecting claim 1, the Office Action recites that claim 1 is rejected under the judicially created doctrine of --obviousness-type-- double patenting over the claims "e.g., claims 12-15" of U.S. Patent No. 6,341,548 since the claims, if allowed, would improperly extend the right to exclude already granted in the patent. The Office Action further recites that the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter.

Thus, the Office Action fails to set forth and make clear the differences between the inventions defined by conflicting claims and the reason why a person of ordinary skill in the art would conclude the invention defined in the claim at issue is an obvious variation of the invention defined in the patent. Rather, the Office Action merely makes the conclusory statement that the claims "e.g., claims 12-15" would improperly extend the right to exclude.

Although Applicants traverse the rejection of the claims under the judicially created doctrine of obviousness-type double patenting, Applicants submit that the attached Terminal Disclaimer in compliance with 37 C.F.R. §1.321(e) and (c) filed concurrently herewith (copy enclosed), renders the rejection moot. Accordingly, it is respectfully requested that the rejection of claim 1 be withdrawn. Therefore, withdrawal of the rejection of claim 1 under the judicially created doctrine of obviousness-type double patenting is respectfully requested.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-3 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

James A. Oliff
Registration No. 27,075

John W. Fitzpatrick
Registration No. 41,018

JAO:JWF/ldg

Attachment:
Terminal Disclaimer

Date: May 23, 2005

OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

DEPOSIT ACCOUNT USE AUTHORIZATION
Please grant any extension necessary for entry;
Charge any fee due to our Deposit Account No. 15-0461